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Anthony J. Palumbo (AP-1048)
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New York, New York 10022
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*Attorneys for Plaintiff
Deer Stags, Inc.*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

	X
DEER STAGS, INC.,	:
	:
Plaintiff,	:
- against -	:
OH! SHOES, LLC.,	:
	:
Defendants.	:
	:

Index No. 06 CV 0626 (RJH)

**COMPLAINT FOR
DECLARATORY
JUDGMENT OF
NON-INFRINGEMENT**

ECF CASE

Plaintiff, Deer Stags, Inc., (“Deer Stags” or “Plaintiff”), by its attorneys Hartman & Craven LLP, as and for its complaint against defendant Oh! Shoes, LLC. (“Oh! Shoes” or “Defendant”), respectfully alleges the following:

Nature of Action

1. This is a civil action seeking declaratory relief of non-infringement of trademarks.
2. At issue is the ability of Deer Stags to sell footwear under the trademark

Oh...DEER!. Although numerous trademark owners claim rights in trademarks in Class 25 that are comprised either in part or in whole by the term “oh,” Defendant is seeking to prevent Plaintiff from using its mark in commerce in connection with footwear.

3. Defendant is the owner of the OH! trademark and sells footwear under this mark.

Annexed hereto as Exhibit A is a copy of a status report printed from the United States' Patent and Trademark Office (the "USPTO") database.

4. Plaintiff Deer Stags is engaged in the manufacture and sale of a variety of casual and dress footwear for men and women. Plaintiff is also the owner of federally registered trademarks, which include the following: DEER STAGS, Reg. No. 2,228,434, DEER STAGS with design, Reg. No. 1,936,341, DEER STAGS ORIGINAL SINCE 1929, Reg. No. 1,944,901, SOFT STAGS with design, Reg. No. 1,955,547, S.U.P.R.O. SOCK with design, Reg. No. 2,881,969, and S.U.P.R.O. SOCK SUPER UNDER-FOOT PEDORTHIC RADICAL ORTHOTIC, Reg. No. 2,824,252 (the "Deer Stags' Marks"). Annexed hereto as Exhibit B are copies of the status reports for each of the listed trademarks printed from the USPTO's database.

5. Defendant OH! Shoes claims exclusive ownership of the "oh" mark in connection with footwear and has threatened Plaintiff Deer Stags with legal action for trademark infringement due to an alleged likelihood of confusion between Defendant's OH! mark and Deer Stags' Oh....DEER! mark. In light of established U.S. trademark law principles, however, Deer Stag's use of the term "oh" as part of its trademark is entirely lawful. Annexed hereto as Exhibit C is a copy of the Defendant's cease desist letter served on Deer Stags' attorney.

6. Plaintiff therefore seeks a declaration that the use of its Oh...DEER! trademark in connection with footwear is entirely lawful and does not infringe any of Defendant's trademark rights.

Venue and Jurisdiction

7. Jurisdiction is proper in this Court because this litigation arises under federal law, namely 17 U.S.C. 1051 et seq. (Lanham Act). The Court has jurisdiction over this action under 28 U.S.C. § 1331 (federal question) and § 1338 (trademarks), and § 2201 (Declaratory Judgment Act).

8. This Court has personal jurisdiction over Defendant because Defendant, upon information and belief, conducts business in the State of New York and within this District, including contracting with companies within the State, advertising and selling its products in New York, and by attending trade shows and otherwise soliciting business in New York.

9. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and (c).

10. An actual case or controversy has arisen between the parties. Defendant has threatened litigation against Deer Stags, and has asserted that Deer Stags' use of the trademark Oh...DEER! in connection with footwear constitutes trademark infringement. These statements threaten injury to Deer Stags. See Exhibit C.

Parties

11. Plaintiff Deer Stags is a corporation organized and existing under the laws of the State of New York with its principal place of business in New York, New York. Deer Stags is a well-renowned footwear manufacturer and has manufactured and sold various types of footwear sold under the DEER STAGS marks.

12. On information and belief, Defendant OH! Shoes is a limited liability company formed under the laws of the State of Oregon. Upon information and belief, Defendant is engaged in the business of selling shoes and advertises and sells such products via shoe stores and the Internet to customers within the jurisdiction of this Court.

General Allegations

I. Deer Stags

13. Deer Stags sells a variety of comfort shoes and stand-alone brands that are marketed under various trademarks (See para. 4). DEER STAGS brand shoes have been sold in the U.S. since 1929.¹

14. One of Deer Stags' stand-alone brands is its line of women's footwear sold under the Oh...DEER! trademark.

15. Deer Stags has used the Oh...DEER! mark in interstate commerce since January 14, 2004.

16. The Oh...DEER! mark is used as a play on words – that is, a play on the name of the company, Deer Stags. When used on its respective shoe boxes and advertisements, the Oh...DEER! mark is found inside a cartoon character's thought bubble. The Oh...DEER! mark is located on all sides of the shoe box, as well as under the box lid and the mark is imprinted on the box's tissue paper. Furthermore, the lid and the sides also include the phrase "COMFORT FOOTWEAR". Annexed hereto as Exhibit D is a copy of Deer Stags' shoebox which demonstrates use of the Oh...DEER! mark.

17. Deer Stags filed a trademark application with the United States Patent Trademark Office ("USPTO") on July 29, 2005 for the mark Oh...DEER! in Class 25 for footwear, Serial No.: 78/681,351. Annexed hereto as Exhibit E is a copy of the status report from the USPTO's database for the Oh...DEER! trademark application.

18. Oh...DEER! brand footwear can be found in stores such as Goody's Family Clothing Stores, Marshall's, TJ Maxx, QVC, Bob's Stores, Dress Barn, Strawberry, as well as on Internet web sites such as www.zappos.com.

II. OH! Shoes

19. Based on information and belief, Defendant sells a variety of dress and heeled women's shoes that are marketed under the OH! trademark.

20. More importantly, Defendant uses the OH! mark in conjunction with a stylized design. The OH! mark consists of a stylized logo whereby the heel of a shoe becomes the OH! mark's exclamation point. Annexed hereto as Exhibit F is a copy of an advertisement demonstrating the Defendant's OH! mark.

21. According to the status report, Defendant has used the OH! mark in commerce since August 30, 2004. See Exhibit A.

22. Based on information and belief, OH! brand footwear can be found in New York stores such as Marty's and Foot Solutions, as well as on Internet web sites such as www.zappos.com.

23. Furthermore, Defendant attended the New York Shoe Expo held at the Javits Convention Center from June 8 through June 10, 2005. Annexed hereto as Exhibit G is a copy of the cover booklet for the New York Shoe Expo and its directory listing which identifies Defendant OH! Shoes as a participant in the event.

III. The Present Dispute

24. On or about December 1, 2005, Hartman & Craven, counsel for Deer Stags, received a letter dated November 11, 1005, from Ronald T. Adams, an attorney at Black Helterline LLP ("Black Helterline"), counsel to Defendant, demanding that Deer Stags "immediately ceases and desist from further use of oh...Deer! and provide written assurances that Deer Stags, will withdraw its pending application for oh...Deer! or let it expire." See Exhibit C.

¹ Plaintiff Deer Stags has owned the Deer Stags' Marks since 1989 when it acquired them from previous owner.

25. In the letter, Defendant alleged that it is the owner of the trademark “OH!” for footwear, Reg. No. 2,968,373, and that Deer Stag’s Oh...DEER! trademark is creating confusion at trade shows and on www.zappos.com and is diluting the effectiveness of the OH! trademark.

26. As the term “oh” is a ubiquitous and ordinary mark used in connection with clothing and footwear, it is a weak mark and is not entitled to exclusive protection herein. Accordingly, Plaintiff is entitled to a declaration that its use of the trademark Oh....DEER! in connection with footwear neither infringes Defendant’s trademark nor violates the Lanham Act.

Declaratory Relief of Non-Infringement Against Defendant
(Declaratory Judgment Pursuant to 28 U.S.C. 2201)

27. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 26 of this Complaint as if fully set forth herein.

28. Defendant has claimed that Deer Stags’ sale of footwear under its Oh...DEER! trademark constitutes trademark infringement, and has threatened to bring a lawsuit against Deer Stags on this basis.

29. Based on the foregoing allegations, there exists between the parties an actual, present and justiciable controversy concerning Deer Stags’ right to sell footwear under the Oh...DEER! trademark.

30. Deer Stags seeks a declaration from this Court that its use of the trademark Oh...DEER! in connection with footwear does not infringe upon any rights that Defendant may have in its OH! Trademark.

Prayer for Relief

WHEREFORE, Plaintiff Deer Stags, Inc., respectfully prays for judgment as follows:

- (a) Declaring that Plaintiff Deer Stags' use of the trademark Oh...DEER! in connection with the manufacture and sale of footwear does not violate the Lanham Act, 15 U.S.C. § 1125 or otherwise infringe upon any rights that Defendant may have in its OH! mark;
- (b) Awarding Plaintiff Deer Stags its costs and disbursements, including expert witness fees, in this action; and
- (c) For such other and further relief to which Deer Stags may be entitled as a matter of law or equity, or which the Court determines to be just and proper.

Dated: New York, New York
January 26, 2006

HARTMAN & CRAVEN LLP

By: s/Edward White/
Edward White (EW-0368)

488 Madison Avenue
16th Floor
New York, New York 10022
(212) 753-7500

*Attorneys for Plaintiff
Deer Stags, Inc.*

EXHIBIT A

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2006-01-26 10:23:49 ET

Serial Number: 78243997 [Assignment Information](#)

Registration Number: 2968373 [Assignment Information](#)

Mark (words only): OH!

Standard Character claim: No

Current Status: Registered.

Date of Status: 2005-07-12

Filing Date: 2003-04-30

Transformed into a National Application: No

Registration Date: 2005-07-12

Register: Principal

Law Office Assigned: LAW OFFICE 108

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 650 -Publication And Issue Section

Date In Location: 2005-06-03

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. OH! SHOES, LLC

Address:

OH! SHOES, LLC
4009 NW DEVOTO
PORTLAND, OR 97221

United States

Legal Entity Type: Ltd Liab Co

State or Country Where Organized: Oregon

GOODS AND/OR SERVICES**International Class: 025**

Men's, women's and children's footwear namely shoes, boots, sport shoes, and slippers; clothing, namely, shirts, blouses, skirts, coats, trousers, dresses, pullovers, pajamas, socks and stockings, jumpers, underpants, underclothes, sweaters, hats, scarves, ties, raincoats, overcoats, swimwear, wind jackets, belts, fur coats, headscarves, gloves, dressing-gowns and bath-robés

First Use Date: 2004-01-31

First Use in Commerce Date: 2004-08-30

Basis: 1(a)

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2005-07-12 - Registered - Principal Register

2005-04-29 - Law Office Registration Review Completed

2005-04-19 - Assigned To LIE

2005-04-11 - Allowed for Registration - Principal Register (SOU accepted)

2005-03-26 - Statement of use processing complete

2005-01-31 - Amendment to Use filed

2005-01-31 - TEAS Statement of Use Received

2004-08-10 - Notice of allowance - mailed

2004-05-18 - Published for opposition

2004-04-28 - Notice of publication

2004-02-25 - Approved for Pub - Principal Register (Initial exam)

2004-01-14 - Communication received from applicant

Latest Status Info

<http://tarr.uspto.gov/servlet/tarr?regser=serial&entry=78243997&act...>

2004-01-14 - Email Received

2003-09-28 - Non-final action e-mailed

2003-09-28 - Case file assigned to examining attorney

CORRESPONDENCE INFORMATION

Correspondent

Ronald T. Adams (Attorney of record)

Ronald T. Adams
Black Helterline
1900 Fox Tower 805 SW Broadway
Portland, OR 97205-3359

Phone Number: 503-417-2132

Fax Number: 503-417-2172

EXHIBIT B

Latest Status Info

Page 1 of 3

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2006-01-26 10:32:21 ET

Serial Number: 75431736

Registration Number: 2228434

Mark (words only): DEER STAGS

Standard Character claim: No

Current Status: Section 8 and 15 affidavits have been accepted and acknowledged.

Date of Status: 2005-05-11

Filing Date: 1998-02-10

Transformed into a National Application: No

Registration Date: 1999-03-02

Register: Principal

Law Office Assigned: LAW OFFICE 108

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 830 -Post Registration

Date In Location: 2005-05-11

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Deer Stags, Inc.

Address:

Deer Stags, Inc.
1414 Avenue of the Americas 17th Floor
New York, NY 10019
United States

Legal Entity Type: Corporation
State or Country of Incorporation: New York

GOODS AND/OR SERVICES

International Class: 025
footwear, namely, boots, canvas shoes, casual shoes, dress shoes, golf shoes, hiking shoes, sandals,

Latest Status Info

walking shoes
First Use Date: 1974-04-00
First Use in Commerce Date: 1974-04-00

Basis: 1(a)

ADDITIONAL INFORMATION

Disclaimer: "DEER"

Prior Registration Number(s):

1936341

1944901

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2005-05-11 - Section 8 (6-year) accepted & Section 15 acknowledged

2005-03-02 - Section 8 (6-year) and Section 15 Filed

2005-03-02 - TEAS Section 8 & 15 Received

1999-03-02 - Registered - Principal Register

1998-12-08 - Published for opposition

1998-11-06 - Notice of publication

1998-09-25 - Approved for Pub - Principal Register (Initial exam)

1998-09-23 - Examiner's amendment mailed

1998-09-11 - Case file assigned to examining attorney

CORRESPONDENCE INFORMATION

Correspondent

ROBERT S LIPTON (Attorney of record)

ROBERT S LIPTON
LIPTON WEINBERGER & HUSICK
PO BOX 934
MEDIA PA 19063-0934

Latest Status Info

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2006-01-26 10:32:40 ET

Serial Number: 74441694 [Assignment Information](#)

Registration Number: 1936341 [Assignment Information](#)

Mark



(words only): DEER STAGS

Standard Character claim: No

Current Status: Section 8 and 15 affidavits have been accepted and acknowledged.

Date of Status: 2002-01-03

Filing Date: 1993-09-30

Transformed into a National Application: No

Registration Date: 1995-11-21

Register: Principal

Law Office Assigned: LAW OFFICE 108

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 830 -Post Registration

Date In Location: 2005-10-27

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Deer Stags, Inc.

Address:

Deer Stags, Inc.
17th Floor 1414 Avenue of the Americas

Latest Status Info

New York, NY 10019

United States

Legal Entity Type: Corporation

State or Country of Incorporation: New York

GOODS AND/OR SERVICES

International Class: 025

footwear composed in either whole or substantial part of deerskin

First Use Date: 1989-12-15

First Use in Commerce Date: 1989-12-15

Basis: 1(a)

ADDITIONAL INFORMATION

Disclaimer: "DEER"

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2005-10-10 - Combined Section 8 (10-year)/Section 9 filed

2005-10-10 - TEAS Section 8 & 9 Received

2002-01-03 - Section 8 (6-year) accepted & Section 15 acknowledged

2001-11-13 - Post Registration action mailed Section 8 & 15

2001-10-18 - Section 8 (6-year) and Section 15 Filed

1995-11-21 - Registered - Principal Register

1995-08-29 - Published for opposition

1995-07-28 - Notice of publication

1995-05-02 - Approved for Pub - Principal Register (Initial exam)

1995-04-27 - Examiner's amendment mailed

1994-10-27 - Final refusal mailed

1994-03-03 - Non-final action mailed

Latest Status Info

Page 3 of 3

1994-01-25 - Case file assigned to examining attorney

CORRESPONDENCE INFORMATION

Correspondent

Robert S. Lipton (Attorney of record)

ROBERT S. LIPTON
LIPTON, WEINBERGER & HASICK
201 NORTH JACKSON STREET
P.O. BOX 934
MEDIA, PA 19063-0934

Latest Status Info

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2006-01-26 10:32:53 ET

Serial Number: 74441696 [Assignment Information](#)

Registration Number: 1944901 [Assignment Information](#)

Mark



(words only): DEER STAGS ORIGINAL SINCE 1929

Standard Character claim: No

Current Status: Section 8 and 15 affidavits have been accepted and acknowledged.

Date of Status: 2002-03-08

Filing Date: 1993-09-30

Transformed into a National Application: No

Registration Date: 1996-01-02

Register: Principal

Law Office Assigned: LAW OFFICE 108

If you are the applicant or applicant's attorney and have questions about this file, please contact
the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 830 -Post Registration

Date In Location: 2005-10-27

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Deer Stags, Inc.

Address:

Deer Stags, Inc.
1414 AVE OF THE AMERICAS 17TH FL

Latest Status Info

New York, NY 10019

United States

Legal Entity Type: Corporation

State or Country of Incorporation: New York

GOODS AND/OR SERVICES

International Class: 025

footwear composed in either whole or substantial part of deerskin

First Use Date: 1989-12-15

First Use in Commerce Date: 1989-12-15

Basis: 1(a)

ADDITIONAL INFORMATION

Disclaimer: "ORIGINAL SINCE 1929" and "DEER"

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2005-10-10 - Combined Section 8 (10-year)/Section 9 filed

2005-10-10 - TEAS Section 8 & 9 Received

2002-03-08 - Section 8 (6-year) accepted & Section 15 acknowledged

2002-02-08 - Section 8 (6-year) and Section 15 Filed

2001-12-21 - Section 8 (6-year) and Section 15 Filed

1996-01-02 - Registered - Principal Register

1995-10-10 - Published for opposition

1995-09-08 - Notice of publication

1995-05-18 - Approved for Pub - Principal Register (Initial exam)

1995-05-15 - Examiner's amendment mailed

1995-05-15 - Previous allowance count withdrawn

1995-05-02 - Approved for Pub - Principal Register (Initial exam)

Latest Status Info

1995-04-27 - Examiner's amendment mailed

1994-10-27 - Final refusal mailed

1994-03-03 - Non-final action mailed

1994-01-25 - Case file assigned to examining attorney

CORRESPONDENCE INFORMATION

Correspondent

Robert S. Lipton (Attorney of record)

ROBERT S. LIPTON
LIPTON WEINBERGER & HUSICK
201 NORTH JACKSON STREET
P.O. BOX 934
MEDIA, PA 19063-0934

Latest Status Info

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2006-01-26 10:33:10 ET

Serial Number: 74441695 [Assignment Information](#)

Registration Number: 1955547 [Assignment Information](#)

Mark

(words only): SOFT STAGS THE GENUINE COMFORT SHOE

Standard Character claim: No

Current Status: Section 8 and 15 affidavits have been accepted and acknowledged.

Date of Status: 2002-04-16

Filing Date: 1993-09-30

Transformed into a National Application: No

Registration Date: 1996-02-13

Register: Principal

Law Office Assigned: LAW OFFICE 108

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 830 -Post Registration

Date In Location: 2005-10-27

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Deer Stags, Inc.

Address:

Deer Stags, Inc.
1414 Avenue of the Americas 17th Floor

Latest Status Info

New York, NY 10019
United States
Legal Entity Type: Corporation
State or Country of Incorporation: New York

GOODS AND/OR SERVICES

International Class: 025
foot wear
First Use Date: 1989-12-15
First Use in Commerce Date: 1989-12-15

Basis: 1(a)

ADDITIONAL INFORMATION

Disclaimer: "SOFT" and "GENUINE COMPORT SHOE"

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2005-10-10 - Combined Section 8 (10-year)/Section 9 filed
2005-10-10 - TEAS Section 8 & 9 Received
2002-04-16 - Section 8 (6-year) accepted & Section 15 acknowledged
2002-02-12 - Section 8 (6-year) and Section 15 Filed
1996-02-13 - Registered - Principal Register
1995-11-21 - Published for opposition
1995-10-20 - Notice of publication
1995-06-27 - Published for opposition
1995-05-26 - Notice of publication
1995-03-01 - Approved for Pub - Principal Register (Initial exam)
1995-01-17 - Communication received from applicant
1994-12-19 - Final refusal mailed

Latest Status Info

Page 3 of 3

1994-10-26 - Communication received from applicant
1994-10-18 - Notice of unresponsive amendment mailed
1994-09-06 - Communication received from applicant
1994-03-03 - Non-final action mailed
1994-01-25 - Case file assigned to examining attorney

CORRESPONDENCE INFORMATION

Correspondent

Robert S. Lipton (Attorney of record)

ROBERT S. LIPTON
LIPTON, WEINBERGER & HUSICK
201 NORTH JACKSON STREET
P.O. BOX 934
MEDIA, PA 19063-0934

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2006-01-26 10:33:21 ET

Serial Number: 75844291

Registration Number: 2881969

Mark



(words only): S.U.P.R.O. SOCK

Standard Character claim: No

Current Status: Registered.

Date of Status: 2004-09-07

Filing Date: 1999-11-10

Transformed into a National Application: No

Registration Date: 2004-09-07

Register: Principal

Law Office Assigned: LAW OFFICE 103

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 900 -File Repository (Franconia)

Date In Location: 2004-09-16

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. DEER STAGS, INC.

Address:

DEER STAGS, INC.
1328 BROADWAY

Latest Status Info

Page 2 of 3

NEW YORK, NY 10001
United States
Legal Entity Type: Corporation
State or Country of Incorporation: New York

GOODS AND/OR SERVICES

International Class: 025
ORTHOTIC INSOLES
First Use Date: 1999-11-10
First Use in Commerce Date: 1999-11-10

Basis: 1(a)

ADDITIONAL INFORMATION

Disclaimer: "SOCK"

Description of Mark: THE MARK CONSISTS IN PART OF A STYLIZED DESIGN OF A DEER'S HEAD AND ANTLERS.

Prior Registration Number(s):

1936341

1944901

1955547

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2004-09-07 - Registered - Principal Register

2004-08-23 - TEAS Change of Correspondence Received

2004-06-18 - Allowed for Registration - Principal Register (SOU accepted)

2004-06-14 - Statement of use processing complete

2004-05-25 - Amendment to Use filed

2004-05-27 - PAPER RECEIVED

2004-02-24 - Notice of allowance - mailed

2003-12-02 - Published for opposition

Latest Status Info

2003-11-12 - Notice of publication
2003-10-03 - Approved for Pub - Principal Register (Initial exam)
2003-08-11 - Case File in TICRS
2000-11-20 - Letter of suspension mailed
2000-10-25 - Communication received from applicant
2000-04-25 - Non-final action mailed
2000-03-24 - Case file assigned to examining attorney

CORRESPONDENCE INFORMATION

Correspondent

Joseph Diamante (Attorney of record)

Ilene B. Tannen, Esq.
Jones Day
222 East 41st Street
New York NY 10017

Phone Number: 212-326-3939

Fax Number: 212-755-7306

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2006-01-26 10:33:41 ET

Serial Number: 75844292

Registration Number: 2824252

Mark



(words only): S.U.P.R.O. SOCK SUPER UNDER-FOOT PEDORTHIC RADICAL ORTHOTIC

Standard Character claim: No

Current Status: Registered.

Date of Status: 2004-03-23

Filing Date: 1999-11-10

Transformed into a National Application: No

Registration Date: 2004-03-23

Register: Principal

Law Office Assigned: LAW OFFICE 103

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 900 -File Repository (Franconia)

Date In Location: 2004-03-29

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. DEER STAGS, INC.

Address:

DEER STAGS, INC.
1328 BROADWAY

Latest Status Info

Page 2 of 3

NEW YORK, NY 10001

United States

Legal Entity Type: Corporation**State or Country of Incorporation:** New York

GOODS AND/OR SERVICES

International Class: 025

FOOTWEAR

First Use Date: 1999-11-10**First Use in Commerce Date:** 1999-11-10**Basis:** 1(a)

ADDITIONAL INFORMATION

Disclaimer: "SOCK", "SUPER", "PEDORTHIC", and "ORTHOTIC"**Description of Mark:** The mark consists in part of a stylized design of a deer's head and antlers.**Prior Registration Number(s):**

1936341

1944901

1955547

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2004-03-23 - Registered - Principal Register

2003-10-20 - PAPER RECEIVED

2003-12-30 - Published for opposition

2003-12-10 - Notice of publication

2003-10-03 - Approved for Pub - Principal Register (Initial exam)

2003-08-08 - Case File in TICRS

2000-11-20 - Letter of suspension mailed

2000-10-25 - Communication received from applicant

2000-04-25 - Non-final action mailed

CORRESPONDENCE INFORMATION

Correspondent

Joseph Diamante (Attorney of record)

JOSEPH DIAMANTE
PENNIE & EDMONDS LLP
1155 AVENUE OF THE AMERICAS
NEW YORK, NEW YORK 10036

EXHIBIT C

DEC-01-05

18:19

FROM-FTI Consulting

2128419350

T-415 P.001/002 F-017

B L A C K

H E L T E R L I N E LLP

ATTORNEYS AND COUNSELORS AT LAW

RONALD T. ADAMS
 Direct Dial: (503) 417-2132
 E-mail: ra@bhllaw.com
Admitted in Oregon and Washington

November 11, 2005

File No.: 0211-2

Debra I. Resnick, Esq.
 Hartman Craven, LLP
 488 Madison Avenue
 New York, NY 10022

Reference: oh...DEER! Trademark Application, Serial No. 78681351

Dear Ms. Resnick:

We represent OH! Shoes, LLC (the "Company") the owner of the OH! trademark in International Class 025 for men's and women's shoes, etc., Registration No. 2968373.

Recently, representatives of the Company have become aware of confusion caused by the use of oh...DEER! by your client, Deer Stags, Inc. In investigating the issue, we discovered the July 29, 2005, oh...Deer! application with the Trademark Office and located your name as the attorney of record. The Company's representatives report that there is confusion at trade shows, inquiries are made as to the relationship between the OH! mark and the oh...DEER! mark as to the ownership and origin of the respective products. Another example of the confusion is the use of oh...DEER! on Zappos.com where OH! Shoes are also advertised. Both Deer Stags and the Company describe their products as comfortable and stylist women's footwear.

The Company filed its intent to use application on April 30, 2003, and began using the mark in 2004. The Company's mark was already registered when you filed the oh...Deer registration on July 29, 2005, alleging use in 2004. Dear Stags, Inc.'s use of a confusingly similar mark is creating confusion and diluting the effectiveness of the Company's trademark. The Company demands that you immediately cease and desist from further use of oh...Deer! and provide written assurances that Dear Stags, will withdraw its pending application for oh...Deer! or let it expire.

The Company has expended a considerable amount of time, effort and money in developing and promoting the OH! mark on its products. The Company takes its intellectual property rights seriously, but seeks an amicable resolution to this matter, which we believe is in



1200 FOX TOWER 805 SOUTHWEST BROADWAY PORTLAND OREGON 97205-2250
 TELEPHONE 503.224.5500 FACSIMILE 503.224.6148 WWW.BHLAW.COM

DEC-01-05 18:19 FROM-FTI Consulting

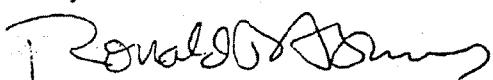
2128419350

T-415 P.002/002 F-017

Debra L. Resnick, Esq.
November 11, 2005 - Page 2

the best interest of both the Company and Dear Stags, Inc. I look forward to your response
within fourteen (14) days from your receipt of this letter.

Very truly yours,



Ronald T. Adams

RTA:cmb:g1

Enclosure

H:\Clients\0211-2\Corr\Resnick01.ltr.doc

cc: Mr. Greg Van Gasse

EXHIBIT D

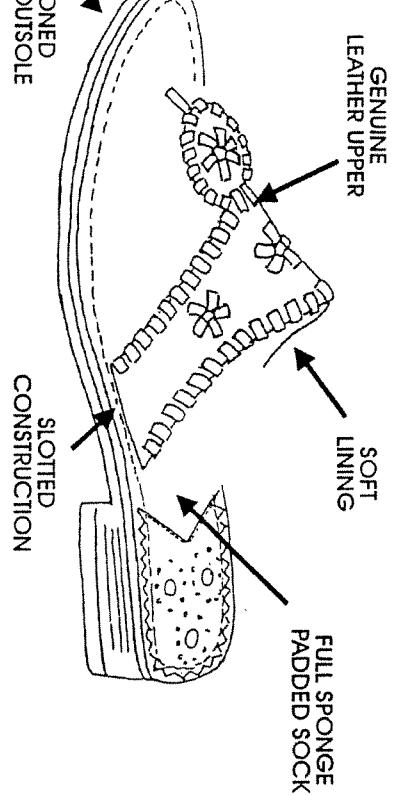


oh...DEER!

oh...VEER!

oh...DEER!

oooh...DEER!



COMFORT SANDAL COLLECTION
www.deerstags.com

© Deer Stags, Inc., New York 1991

EXHIBIT E

Latest Status Info

Page 1 of 2

Thank you for your request. Here are the latest results from the **TARR web server**.

This page was generated by the TARR system on 2006-01-26 10:20:24 ET

Serial Number: 78681351

Registration Number: (NOT AVAILABLE)

Mark

oh...DEER!

(words only): OH...DEER!

Standard Character claim: Yes

Current Status: Newly filed application, not yet assigned to an examining attorney.

Date of Status: 2005-08-05

Filing Date: 2005-07-29

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: (NOT AVAILABLE)

If you are the applicant or applicant's attorney and have questions about this file, please contact
the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 042 -New Application Processing

Date In Location: 2005-08-05

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Deer Stags, Inc.

Address:

Deer Stags, Inc.
1414 Avenue of the Americas, 17th Floor

Latest Status Info

New York, NY 10019

United States

Legal Entity Type: Corporation

State or Country of Incorporation: New York

GOODS AND/OR SERVICES

International Class: 025

footwear

First Use Date: 2004-01-14

First Use in Commerce Date: 2004-01-14

Basis: 1(a)

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2005-09-27 - TEAS Change of Correspondence Received

2005-08-08 - Applicant amendment prior to exam entered

2005-08-08 - TEAS Preliminary Amendment Received

2005-08-04 - New Application Entered In Tram

CORRESPONDENCE INFORMATION

Correspondent

Debra I. Resnick (Attorney of record)

Richard H. Koby, Esq.

Hartman & Craven LLP

488 Madison Avenue

New York NY 10022

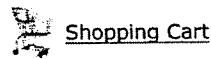
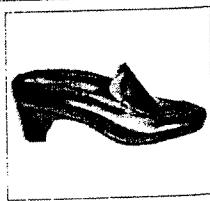
EXHIBIT F

Womens Oh Shoes - Free Shipping on all Orders \$29 and up!

<http://www.martyshoes.com/store/womensohshoessm.htm>[Store Locations](#) [Customer Service](#) [E-Mail Us](#)

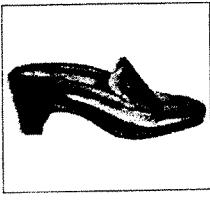
Search for your shoe..

Go!

[Home](#)[Women's Shoes](#)[Men's Shoes](#)[Kid's Shoes](#)[Store Coupon](#)[Accessories](#)**FREE SHIPPING - CONTIGUOUS US**
\$29 and up![palm version](#)You are here-> [Womens Shoes](#)-->[Womens Brand Names](#)-->[Oh Shoes](#)Womens Oh Shoes
Belinda (Aubergine)

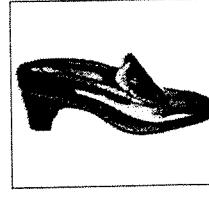
Sale:\$49.00

Compare at: \$190.00

[More Info](#)[Buy Now](#)Womens Oh Shoes
Belinda (Black)

Sale:\$49.00

Compare at: \$190.00

[More Info](#)[Buy Now](#)Womens Oh Shoes
Belinda (Brown)

Sale:\$49.00

Compare at: \$190.00

[More Info](#)[Buy Now](#)Womens Oh Shoes
Carina (Aubergine)

Sale:\$49.00

Compare at: \$190.00

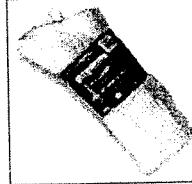
[More Info](#)[Buy Now](#)Adidas 2 Pack Socks
\$6.90Wigwam 3 Pack
Socks \$6.90Fila 2 Pack Socks
\$6.90

EXHIBIT G



June 8-10, 2005

Wednesday, Thursday and Friday
at the Javits Convention Center-
Hall 1D & 1E

The FFANY Collections at
The Hilton New York Hotel

FFANY Member Showrooms



FFaNY

NYSE Fashion Market Week
Javits Hall 1D, 1E, Hilton New York Hotel
& New York Showrooms

Markon Footwear, Inc. 104 West 29th Street Suite #8B 212.947.0099	Michele Bertelli 270 Lafayette Street Suite #505 212.219.0030	Na*Na 1370 Ave. of the Americas 12th Floor 516.384.2823	Nina The Crown Building 730 Fifth Avenue 212.399.2323
Matiko Footwear, Inc. Javits Hall 1D 1117	Middletown Footwear Javits Hall 1D 702	Nancy Geist Hilton 14th Floor 1420	Nine & Company 1411 Broadway 17th Floor 212.391.5000
Matisse Javits Hall 1E 300	Miume-tonka Moccasin Javits Hall 1D 1310	Nancy Nancy Hilton 14th Floor 1420	Nine West 1411 Broadway 17th Floor 212.391.5000
Mavis Javits Hall 1D 1100	Minnetonka Sandals Javits Hall 1D 1310	Nancy Li Javits Hall 1E 400	Nine West Flwr., Corp. 1411 Broadway 17th Floor 212.391.5000
Mavis -Multimoda Javits Hall 1D 1100	Minnetonka Slippers Javits Hall 1D 1310	Naot Javits Hall 1D 1208	1411 Broadway 17th Floor 212.391.5000
Max Monelli Javits Hall 1D 1202	Miss Mak Designs Javits Hall 1D 1226	National Shoe Retailers Association Javits Hall 1D 827	Nine West Kids 1411 Broadway 17th Floor 212.391.5000
Max Red Javits Hall 1E 310	MISS ME Javits Hall 1E 316	Natures Breeze Javits Hall 1E 139	NO ? Question Javits Hall 1D 810
Max Studio 1370 Ave. of the Americas 5th Floor Tel: 212.977.7662 Fax: 212.977.7680	Moda Fusion Javits Hall 1D 1008	Naughty Monkey Flwr. Javits Hall 1E 123	NSRA Javits Hall 1D 827
Me Too Shoes 1370 Ave. of the Americas 17th Floor 212.246.3939	Modanova Javits Hall 1D 1202	Navid O Nadia Javits Hall 1E 418	Nurse Mates 336 West 37th Street 6th Floor 203.661.2424
Medori Javits Hall 1D 1203	Mootsies Tootsies 1411 Broadway 17th Floor	New Creators, Inc. Javits Hall 1E 134	Obay Javits Hall 1D 1309
Mens Diego Sanz Javits Hall 1D 910	212.391.5000	New Portania Javits Hall 1D 1317	Oh...Deer! 1414 Ave. of the Americas 16th Floor 212.888.2424
Merrell® 717 Fifth Avenue 4th Floor (Ent: 56th St.) 212.223.8055	Mootsies Tootsies Kids 1411 Broadway 17th Floor	New York Transit, Inc. 1370 Ave. of the Americas 5th Floor	Oh! Shoes Hilton 14th Floor 1404
Mia Javits Hall 1E 524	212.391.5000	Nicole 1370 Ave. of the Americas 56th St. & 6th Ave. Suite #1000	Olein Shoe Corp. Javits Hall 1E 214
Mia Kids Javits Hall 1E 524	Mountain Gear Javits Hall 1D 1119	212.582.2700	Oliver Javits Hall 1D 801
Michael Antonio Javits Hall 1E 107	Mulinsen® Javits Hall 1D 1217	Nicole Miller footwear 1370 Ave. of the Americas 8th Floor	Olivia Rose Tal Hilton 14th Floor 1411
Michael Kors 20 West 57th St., 4th Floor 212.541.9092	Mustang Javits Hall 1D 1220	212.246.4735	Omni Footwear Inc. 1370 Ave. of the Americas 12th Floor 516.384.2823
MICHAEL Michael Kors 11 West 42nd Street 20th Floor 212.207.8700	N.Y.L.A. Javits Hall 1E 104		
	N.Y.L.A. Men Javits Hall 1E 104		
	N.Y.L.A. Shoes Inc. Javits Hall 1E 104		